

7-11-01

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TERESA LeCLERCQ; AL LeCLERCQ;)
JAN MATISIAK; WALT MATISIAK,)
individually, and on behalf of all)
persons similarly situated,)

Plaintiffs;)

-vs-

No. 00 C 7164

THE LOCKFORMER COMPANY, a division)
of MET-COIL SYSTEMS CORPORATION,)
a Delaware corporation; and)
MESTEK, INC., a Pennsylvania)
corporation and HONEYWELL)
INTERNATIONAL, INC., a Delaware)
corporation,)

Defendants.)

EPA Region 5 Records Ctr.



352945

The deposition of RICHARD BERGGREEN
called by the Plaintiff for examination, taken pursuant
to the Federal Rules of Civil Procedure of the United
States District Courts pertaining to the taking of
depositions before MAUREEN A. WOODMAN, a notary public
within and for the County of Cook and State of
Illinois, at Suite 350, 224 South Michigan Avenue,
Chicago, Illinois, on the 11th day of July, 2001, at
the hour of 9:30 o'clock a.m.

<p style="text-align: right;">Page 94</p> <p>1 have drawn that issue to Lockformer's attention, 2 wouldn't you? 3 A. Yes, I think we would have. 4 MR. BERGER: Mark this as Exhibit No. 7. 5 (WHEREUPON, said document 6 was marked as Berggreen 7 Deposition Exhibit No. 7 8 for Identification.) 9 BY MR. BERGER: 10 Q. Isn't it true that the threat to adjacent 11 homeowners is something you would have talked with 12 senior Lockformer people about from the get-go? 13 MR. BIEDERMAN: Objection, lacks foundation. I am 14 going to object to the form. 15 THE WITNESS: Could you ask it again. 16 BY MR. BERGER: 17 Q. Isn't it true that the threat or potential 18 threat for impact to adjacent residents is something 19 you would have talked with Lockformer's personnel about 20 from the beginning? 21 MR. BIEDERMAN: Same objection. 22 THE WITNESS: No, I don't know from the beginning. 23 Because if the contamination was sufficiently local, 24 then it wouldn't have been a threat.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. It is familiar. 2 Q. It appears -- strike that. 3 Do you have any reason to believe that Mr. 4 Stover did not fax you on October 7, 1992, this 5 September 30, 1992, letter from Tim Love at Allied 6 Signal? 7 A. I have no reason to believe that he did not 8 fax this to me. 9 Q. And your best recollection is that he did and 10 that you reviewed it? 11 A. That's correct. 12 Q. And that would have been on or about the date 13 the document bears, October 7, 1992? 14 A. That's correct. 15 Q. If you look at the second page of this exhibit 16 dated September 30, 1992 -- incidentally, this would be 17 after you had prepared your report concerning the work 18 you did in 1992; isn't that right? 19 A. Yes. 20 Q. In the second paragraph it says, "Based on the 21 information available, Allied Signal believes that the 22 problems need to be defined in greater detail. As 23 discussed, I suggest the following steps be taken: 24 One, determine the location and status, active,</p>
<p style="text-align: right;">Page 95</p> <p>1 I think that the issue of the threat would 2 have been raised when we realized that there was a 3 threat, rather than raising it as an issue from the 4 get-go. 5 MR. BERGER: Give me that back. We will remark it 6 as a different exhibit. Mark this as Exhibit No. 7. 7 (WHEREUPON, said document 8 was marked as Berggreen 9 Deposition Exhibit No. 7 10 for Identification.) 11 BY MR. BERGER: 12 Q. I am showing you what's been marked as Exhibit 13 No. 7, which is a fax cover sheet dated October 7, 14 1992, to STS Consultants, attention Richard G. 15 Berggreen, from Harold Stover, and it attaches to it a 16 September 30, 1992, letter from Allied Signal signed by 17 Mr. Timothy P. Love and addressed to Mr. Harold Stover 18 at Lockformer Company. And I will represent to you, 19 Mr. Berggreen, this is a document that was in the files 20 of STS. 21 A. Okay. 22 Q. Have you reviewed that document? 23 A. I have. 24 Q. Do you recognize it?</p>	<p style="text-align: right;">Page 97</p> <p>1 inactive or abandoned, of all wells in the immediate 2 area. This information will determine who is using 3 well water in the area and side wells which could be 4 tested." Do you see that? 5 A. I do. 6 Q. Isn't it true that this indicates that you and 7 Lockformer and Allied as of the fall of 1992 discussed 8 the potential impact on the site contamination to wells 9 in the area? 10 A. Yes. 11 Q. And does that refresh your recollection that 12 your discussions with Lockformer concerning the threat 13 presented to residents in the area was a topic that was 14 discussed shortly after you completed the work on site 15 in 1992? 16 A. Yes. 17 Q. Allied is also recommending that the parties 18 develop a program to drill several groundwater sampling 19 wells on site to determine if any groundwater 20 contamination is present; isn't that right? 21 A. That's correct. 22 Q. You believed that groundwater contamination 23 was present based upon the work you had done; isn't 24 that right?</p>

Page 98

1 A I think our opinion was that it certainly
2 could be given the concentrations that were present in
3 the soil.

4 Q. It was likely?

5 A. Right.

6 Q. Does this refresh your recollection as to any
7 conversations you had with Lockformer or Allied Signal
8 in the summer of 1992 concerning the threat to
9 residents in the area or groundwater contamination,
10 other than to refresh your recollection that there were
11 such conversations?

12 A. It does not recall any conversations, other
13 than the fact that this obviously was received and
14 discussed.

15 Q. You believe, don't you, and you believed at
16 the time that Mr. Love's suggestion that you determine
17 the location and status of all wells in the immediate
18 area was a good suggestion, don't you?

19 A. I guess my opinion is that it was information
20 that should be collected, whether or not we collected
21 or they collected.

22 Q. But you know that somebody should have been
23 getting that information in the summer of 1992?

24 A. Somebody should have been getting that

Page 99

1 information soon thereafter.

2 Q. And you know that the suggestion of Mr. Love
3 in paragraph two that a program be developed to drill
4 groundwater sampling wells on the site to define
5 groundwater contamination was also a good suggestion,
6 don't you?

7 A. I do.

8 Q. And you believed that at the time?

9 A. I believed that at the time.

10 Q. Did you tell Mr. Stover -- Mr. Stover faxed
11 you this letter on October 7, 1992. You didn't tell
12 Mr. Stover that these were bad ideas, did you?

13 A. I don't think I would have told him that, no.

14 Q. In fact, you probably would have told him
15 these are things that ought to be done?

16 A. That's a reasonable interpretation of my
17 having received this, yes.

18 Q. It's also your best testimony, isn't it?

19 A. Yes.

20 Q. To your knowledge, nobody -- strike that.

21 STS never sampled groundwater on the
22 Lockformer facility until November 1996; isn't that
23 true?

24 A I thought that on the identification of the

Page 100

1 contamination by the fill pipe that the on-site well
2 was sampled in '92 or '94.

3 Q. I think it was. That was north of the
4 contamination.

5 Let me ask you this question: Isn't it true
6 that STS never sampled a groundwater monitoring well
7 for groundwater that it installed pursuant to a program
8 to drill wells on the site until November of 1996?
9 A. I don't know when the first sampling was, but
10 it was '95 or '96.

11 Q. You know that in September of 1992 Mr. Love
12 comes up with the good idea that a program to drill
13 several groundwater sampling wells on this site be
14 done, and you also know that it wasn't until many years
15 later that groundwater was sampled from a well-drilling
16 program on the site; isn't that true?

17 A. What I know is that he made a recommendation
18 in '92, and we installed wells in '95 or '96. I didn't
19 know or don't know that there weren't other wells
20 installed, but our wells were not installed until '95
21 or '96.

22 Q. Well, you have no information that anybody
23 else on behalf of Lockformer sampled groundwater on the
24 site other than STS prior to the time that you sampled

Page 101

1 it in late 1996; isn't that right?

2 A. I have no information about that, that's
3 correct.

4 Q. So, as best we can tell, four years went by
5 before the suggestion of Mr. Love to sample groundwater
6 wells, monitoring wells, drilled on the site was
7 implemented; isn't that right?

8 A. To the best of my knowledge, that's correct.

9 Q. And you also know that the Lockformer facility
10 well that's on site that you say you sampled in 1992
11 was upgradient or north of the spill site; isn't that
12 right?

13 A. It was north of the spill site, that's
14 correct.

15 MR. BERGER: Mark these as Exhibits 8, 9 and 10.
16 (WHEREUPON, said documents
17 were marked as Berggreen
18 Deposition Exhibit No. 8, 9 and
19 10 for Identification.)

20 BY MR. BERGER:

21 Q. Mr. Berggreen, I am showing you what have been
22 marked as Plaintiff's Exhibits 8, 9 and 10 Berggreen of
23 this date.

24 Exhibit 8 is a document entitled "Contract for

Page 102

1 environmental engineering services, 711 East Ogden
2 Avenue, Lisle, Illinois."
3 And the second page of which is a February 17,
4 '92, letter, looks like from you and Mr. Grumman to
5 Jeryl Dezelick, D-e-z-e-l-i-c-k, at Seyfarth, Shaw.
6 Plaintiff's Exhibit No. 9 is a document second
7 page of which is entitled "Preliminary Exploration of
8 TCE Release."
9 And the third page is dated June 30, 1992, a
10 letter to Jeryl Olson. It looks like it's signed by
11 you or somebody impersonating you.
12 And Plaintiff's Exhibit 10 is a July 30, 1992,
13 letter from STS addressed to Jeryl Olson and signed by
14 you. Do you recognize Plaintiff's Exhibit 8?
15 A. I do.
16 Q. What is it?
17 A. It's our proposal for the work that we would
18 do to investigate the release at the site.
19 Q. And does that appear to be a true and correct
20 copy of your proposal?
21 A. It does.
22 Q. If you look at the date of the letter, it's
23 February 17, 1992. And in the second full paragraph it
24 says, "The work scope was developed based on our recent

Page 103

1 site visit to the Lockformer plant and STS'
2 understanding of Lockformer's objectives with respect
3 to investigating and remediating the TCE spill." Do
4 you see that?
5 A. I do.
6 Q. Does this indicate to you then if you look at
7 this document in Berggreen Exhibit 5 that you actually
8 went to the site, or somebody from STS went to the site
9 sometime between January 30, 1992, and February 17,
10 1992, to undertake the work that was set forth in
11 Plaintiff's Exhibit 5?
12 A. Yes, that would be my understanding.
13 Q. Does this refresh your recollection as to
14 whether it was you that went out there, maybe the use
15 of the term our recent visit to the Lockformer plant?
16 A. It does not refresh my recollection. I don't
17 remember.
18 Q. Do you recall that STS interviewed any
19 employees of Lockformer to discover facts concerning or
20 relevant to the extent of the TCE spill in connection
21 with its work in spring of 1992?
22 A. I don't recall interviews. I do recall there
23 was information provided that the -- some trenching had
24 been done, and that chemical odors had been noted. I

Page 104

1 just don't recall whether that was in a phone
2 conversation or on-site discussions.
3 Q. But you guys made no -- when you say you guys,
4 STS and you and your personnel made no attempt to
5 interview Lockformer or Allied Signal employees
6 concerning the TCE contamination?
7 A. That's correct, I don't recall any interviews.
8 Q. Incidentally, Mike Carroll could have been one
9 of the Lockformer people that you were talking about
10 this issue of the threat to residents; isn't that
11 right, in 1992?
12 A. I don't recall that we were talking about the
13 threats to residents in 1992.
14 Q. Well, we just went through a document where
15 you were talking about the need to develop information
16 concerning wells in the area and concerning groundwater
17 investigation, right?
18 A. Right.
19 Q. Mr. Carroll could have been one of the people
20 at Lockformer with which you were having those
21 discussions?
22 A. He could have been, yes.
23 Q. How about a fellow by the name of Art Link,
24 did you ever meet a guy by the name of Art Link,

Page 105

1 president of Lockformer?
2 A. The name is familiar, I don't know that I ever
3 met Art Link.
4 Q. How about Carol Kowaleski, did you ever meet
5 or talk to Carol Kowaleski?
6 A. That name is also familiar, but I don't
7 remember meeting her or not. Is it a her or him?
8 Q. I think it's a her. It's a her.
9 A. I don't -- the name is familiar again, but I
10 don't remember meeting her.
11 Q. Is there anybody at STS that would have had
12 more contact with the Lockformer officers and personnel
13 concerning the work that was being done other than you?
14 A. No, I would have been the principal contact.
15 Q. If you look at page four of the -- looks like
16 the scope of work attached to Exhibit 8, do you see
17 that?
18 A. I do.
19 Q. Task five relates to data analysis and
20 reporting. Do you see that?
21 A. I do.
22 Q. It says, "STS would like to arrange for a
23 meeting at your office to review our findings and
24 discuss their implications." Do you see that?

Page 106

1 A. I do.
 2 Q. And it says, "Following receipt of your
 3 review, comments, a final report will be prepared." Do
 4 you see that?
 5 A. I do.
 6 Q. Did you have a meeting after you did the work
 7 in the spring of 1992 to discuss the findings and the
 8 implications with the Lockformer people prior to the
 9 time that you prepared a final report?
 10 A. No, I think we ended up just talking over the
 11 phone to Ms. Dezelick.
 12 Q. Why did you want to have a meeting with them
 13 to talk about your findings and the implications?
 14 A. Well, she was going to have to communicate
 15 this to her client, so I wanted to make sure that she
 16 had -- if she had any questions it was clear.
 17 Q. My question is different. You obviously felt
 18 that it was important to have a meeting to discuss the
 19 findings and their implications with Lockformer; isn't
 20 that right?
 21 A. I don't think. I think this was to -- the
 22 lady at Seyfarth, Shaw.
 23 Q. Well, you thought it was important to have a
 24 meeting with her?

Page 107

1 A. Right.
 2 Q. To discuss the findings and implications;
 3 isn't that right?
 4 A. Correct.
 5 Q. Why did you think that was important?
 6 A. Well, I think it's always a good idea to be
 7 across the table from your client so you can make sure
 8 if there are any questions you can get them answered.
 9 Just easier to present things face-to-face than it is
 10 over the phone.
 11 Q. Maybe tell them what the results are before
 12 you put something in writing?
 13 A. I don't think so. Unless it said something
 14 about after our report.
 15 Q. It says --
 16 A. Review our findings.
 17 Q. To review the findings and discuss, following
 18 receipt of comments, a final report will be prepared.
 19 So, you wanted to sit down and talk with
 20 Lockformer or its representatives prior to the time
 21 that you put your findings in writing?
 22 A. No. This proposal is to their attorneys, and
 23 the beginning of the paragraph says we will submit a
 24 draft report to your office for your review and

Page 108

1 comments.
 2 So, there is a draft report that's prepared,
 3 so they have something in writing. And that if there
 4 are things they want to have clarified before they --
 5 it gets finalized, that would be an opportunity to
 6 clear it up, make sure any questions are resolved
 7 before the report is finalized. There is a report
 8 that's prepared.
 9 Q. Was a draft report prepared here and sent to
 10 Lockformer or its representatives, Ms. Dezelick?
 11 A. Yes, I would guess there was, yes.
 12 Q. Do you recall what their comments were?
 13 A. I don't.
 14 Q. Do you recall anything about the comments?
 15 A. I don't.
 16 Q. Whether any comments were made?
 17 A. I'm sorry, I don't.
 18 Q. Do you know why you were talking with Ms.
 19 Dezelick now and writing to her as opposed to Harold
 20 Stover who you had written to in Exhibit 5?
 21 A. I don't know why I would have changed it other
 22 than frequently environmental issues are handled by
 23 attorneys rather than by accountants.
 24 Q. Well, do you recall that maybe after you went

Page 109

1 on site and saw that there was a big problem here you
 2 recommended that they get a lawyer?
 3 A. No, I don't know that I would have made that
 4 recommendation.
 5 Q. Do you recall one way or the other any such
 6 discussions?
 7 A. I don't recall one way or the other.
 8 Q. The next paragraph of this exhibit, Exhibit 8,
 9 says that the discovery may require that the Lockformer
 10 Company or other responsible party under federal and
 11 state regulations undertake remedial measures,
 12 particularly if reportable quantities are encountered.
 13 Do you see that?
 14 A. I do.
 15 Q. This was one of those situations where your
 16 work indicated that remedial measures would be
 17 required; isn't that right?
 18 A. No, because I think we're talking about
 19 reportable quantities, and reportable quantities are --
 20 is a term that specifies a known discharge over a known
 21 period of time, and I don't know that this one fit that
 22 definition.
 23 Q. I beg to differ with you.
 24 The language is particularly if reportable

Page 110

1 quantities are required. Whether or not there is
 2 reportable quantity does not trigger -- is not the only
 3 trigger for remediation, is it?
 4 A. No, but the state and federal regulations
 5 require reportable quantities.
 6 Q. Well, they may require remediation?
 7 A. Correct.
 8 Q. And not reporting, isn't that right?
 9 A. Say that again.
 10 Q. State and federal regulations may require
 11 cleanup but not reporting of a reportable quantity?
 12 A. Correct.
 13 Q. This was one of those situations now where in
 14 your judgment state and federal regulations required
 15 cleanup if not reporting of a reportable quantity;
 16 isn't that right?
 17 A. I don't know. I would have to -- this is one
 18 of those where you have to make sure -- I don't know.
 19 I mean I would want to go back and look at the
 20 regulations to make sure what was found required
 21 regulatory remediation.
 22 Q. You just don't recall right now?
 23 A. I don't.
 24 Q. But you say in this paragraph that STS is not

Page 111

1 taking any responsibility to report or to undertake
 2 cleanup measures, that lies with Lockformer; isn't that
 3 right?
 4 A. That's correct.
 5 Q. Let's look at Plaintiff's Exhibit 9.
 6 MR. ZIBART: I don't want to -- is this a good
 7 time as any to break?
 8 MR. BERGER: That's fine.
 9 (WHEREUPON, a luncheon
 10 break was had.)
 11 BY MR. BERGER:
 12 Q. Looking at Exhibit 9, Mr. Berggreen, showing
 13 you what's been marked as Plaintiff's Berggreen
 14 Deposition Exhibit No. 9, do you recognize that
 15 document, sir?
 16 A. I do.
 17 Q. And what is that document?
 18 A. It's the report of our investigation of the
 19 TCE release next to the pipe.
 20 Q. That's your -- the report of your 1992
 21 investigation, true?
 22 A. That's correct.
 23 Q. And do we see a signature of yours on this
 24 document or on the cover letter?

Page 112

1 A. Yes, on the June 30th cover letter.
 2 Q. And that is your signature?
 3 A. That is, in fact, mine.
 4 Q. You sign your name worse than everyone else
 5 does.
 6 A. Years of practice.
 7 Q. Does it say in this document, sir, when you
 8 were actually out there on site doing this work in
 9 1992?
 10 A. Let me refresh myself.
 11 Q. Maybe if you can look at the boring logs or
 12 any of the documents. If you look at page 01564.
 13 A. Yes, the sampling date is April 7th of '92.
 14 Q. So, you say this -- the field activity is the
 15 on-site field acts took place -- if you look please at
 16 01554, makes reference to field -- field activities on
 17 April 7th.
 18 Does that refresh your recollection that this
 19 was essentially a one-day on-site sample exercise?
 20 A. That's correct.
 21 Q. So, the work on-site was actually done on
 22 April 7, 1992; is that right?
 23 A. That's correct.
 24 Q. And this report truly and accurately reflects

Page 113

1 the work that was done at the site?
 2 A. It does.
 3 Q. Can you tell me from looking at the report how
 4 many soil samples were collected for laboratory
 5 analysis?
 6 A. Five.
 7 Q. And if you look at page 1556 through 1558, it
 8 appears that there was no soil sample submitted for
 9 analysis below a depth of four feet; is that true?
 10 A. It appears to be correct, yes.
 11 Q. And TCE was detected in every one of the soil
 12 samples submitted for chemical analysis; is that true
 13 also?
 14 A. That's correct.
 15 Q. This report was dated June 30, 1992. Knowing
 16 that, and knowing that the on-site activities were --
 17 took place on April 7, 1992, can you fix for me a date
 18 when you would have prepared a draft report, a draft of
 19 this report?
 20 A. Fix a date?
 21 Q. Give me an approximate time that it would have
 22 taken you to prepare a draft given the date of the
 23 field activities, the date of the analytical results
 24 and the date of the final report. I presume this is

Page 114

1 your final report?

2 A. Yes, I would say it's a final report.

3 Q. Can you tell me when you would have sent a
4 draft report to Ms. Dezelick?

5 A. The samples were taken on the 7th. Let's see,
6 analysis was -- it looks like about a two-week
7 turnaround for the analyses, and so then probably a
8 couple of weeks to put the report together, so it
9 probably went to them in early to mid May.

10 Q. Do you know whether you did -- submitted one
11 or more drafts or did one or more reviews?

12 A. I don't know.

13 Q. This report is sent to a Ms. Jeryl Olson. Is
14 that the same person that is Jeryl Dezelick?

15 A. She got married.

16 Q. She got married between the time you were
17 hired and the time you submitted this final report?

18 A. That's correct.

19 Q. If you look back at Exhibit 8, the second page
20 of Exhibit 8, in the second paragraph you say, the work
21 scope was developed based on your recent site visit to
22 the Lockformer plant and STS' understanding of
23 Lockformer's objectives with respect to investigating
24 and remediating the TCE spill. Tell me what were

Page 115

1 Lockformer's objectives with respect to investigating
2 and remediating the TCE spill?

3 MR. BIEDERMAN: Object to form.

4 THE WITNESS: I guess --

5 BY MR. BERGER:

6 Q. Do you remember?

7 A. I thought it was there, that they have an
8 objective to investigate and remediate the spill.

9 Q. So, that was the objective at least as of
10 February of '92, they wanted you to -- they told you
11 they wanted to investigate it and clean it up?

12 A. That's my understanding at that time.

13 Q. What was it based on? The phone call you got
14 saying come -- we understand there's a spill, and we
15 want you to investigate?

16 A. Well, reading this, the work scope was
17 developed based on our visit to the plant, and our
18 understanding of their objectives with respect to that.

19 So, reading that I would say that in our visit
20 there was an understanding that we developed from
21 talking to them that they felt that it ought to be
22 investigated and remediated. I mean it's an
23 understanding that I'm looking back nine years trying
24 to remember.

Page 116

1 Q. I understand that. But they told you they
2 wanted to clean it up at that point in time?

3 A. All I can do is say what it says here. I
4 wrote this making that assumption.

5 Q. I am not trying to be difficult with you, Mr.
6 Berggreen. I can read what it says here. It says you
7 had an understanding whatever Lockformer's objectives
8 were with respect to the investigation and remediation.

9 If you don't recall what they told you in that
10 regard, simply tell me that.

11 A. I don't recall. All I understand is what's
12 here.

13 Q. Okay. You don't remember who it was at
14 Lockformer that articulated the objectives that you
15 make reference to; is that right?

16 A. My recollection is that the only person we
17 talked to in the initial round of work was Harold
18 Stover.

19 Q. So, if you talked to other people at the
20 end -- after you finished this -- strike that.

21 If you talked to other people at Lockformer in
22 1992 other than Stover, it was after you did the
23 on-site activities?

24 MR. BIEDERMAN: Object to the form.

Page 117

1 THE WITNESS: I don't recall talking to anyone
2 other than Harold Stover.

3 BY MR. BERGER:

4 Q. But you don't recall one way or another?

5 A. Don't recall what?

6 Q. You recall you met, for example, Mr. Carroll?

7 A. The person you described was someone that
8 sounds familiar. I don't know where in the history I
9 may have met him.

10 Q. That guy was fired in the fall of 1992. So,
11 if you met him, which you claim you did at Lockformer,
12 it would have been in the fall, summer and fall of
13 1992.

14 A. I think what I said the guy you described, the
15 big guy, mustache sounded familiar.

16 Q. And you recall him?

17 A. Yes.

18 Q. You know that groundwater generally moves in
19 the direction of surface water, don't you?

20 A. There is a -- what is it? A general rule of
21 thumb that the groundwater will -- groundwater slope
22 will perform a subdued replica.

23 Q. What I said is true, that the rule of thumb in
24 your business is that groundwater generally moves